

No. [REDACTED]

122

Office - Supreme Court, U. S.

FILED

JUN 5 1942

CHARLES ELMORE CROLEY

CLERK

IN THE

**Supreme Court of the United States**

OCTOBER TERM 1942

HENRY KRAVITZ,

Petitioner,

—against—

THE PEOPLE OF THE STATE OF NEW YORK,

Respondent.

**PETITION FOR A WRIT OF CERTIORARI TO THE  
COURT OF APPEALS OF THE STATE OF NEW YORK  
AND BRIEF IN SUPPORT THEREOF**

JACOB W. FRIEDMAN,  
*Attorney for Petitioner.*

STATE OF NEW YORK

1885

1886

1887

1888

1889

1890

1891

1892

1893

1894

1895

1896

1897

1898

1899

1900

1901

1902

1903

1904

1905

## TABLE OF CONTENTS

	PAGE
Petition for Writ of Certiorari .....	1
Statement of Matters Involved .....	1
Question Presented .....	3
Reason for Allowance of Writ .....	3
 Brief In Support of Petition .....	 5
Opinions Below .....	5
Jurisdiction .....	5
Statutes Involved .....	6
Statement of the Case .....	7
Specification of Error To Be Urged .....	7
Argument:	
The construction placed by the Court of Appeals upon Penal Law, Sections 974, 975, is so utterly at variance with the common and accepted definition and understanding of the crime of policy (or possession of policy slips) as to render the statutes vague, ambiguous, indefinite and accordingly repugnant to the due process clause of the Constitution .....	8
Conclusion:	
For the reasons stated above, it is respectfully submitted that the application for a writ of certiorari should be granted .....	13

# TABLE OF CASES

	PAGE
Connally v. General Const. Co., 269 U. S. 385, 391 ....	11
Herndon v. Georgia, 295 U. S. 441 .....	9
Lanzetta v. State of New Jersey, 306 U. S. 451, 453 ..	12
People v. Bloom, 248 N. Y. 582 .....	10
People v. Edelstein, 231 App. Div. 459, 247 N. Y. S.	
546, affd. in N. Y. 660 .....	9
People v. Elliott, 74 Mich. 264, 266, 41 N. W. 916 ....	9
People v. Hines, 284 N. Y. 93 .....	10
People v. Weber, 245 App. Div. 827, 281 N. Y. S. 414 ..	10
Saunders v. Shaw, 244 U. S. 317, revg. 138 La. 917, 70	
So. 910 .....	8
United States v. Cohen Grocery Co., 255 U. S. 81 .....	12
Wilkinson v. Gill, 74 N. Y. 63 .....	9

## STATUTES INVOLVED

### New York Penal Law

Section 974 .....	1, 3, 6, 8, 9, 12
Section 975 .....	1, 3, 7, 8, 9, 12

### Judicial Code, as amended

Section 237 .....	5
-------------------	---

### Constitution of the United States

Amendment XIV, Section 1 .....	3
--------------------------------	---

833A IN THE  
**Supreme Court of the United States**

OCTOBER TERM 1942

---

HENRY KRAVITZ,

Petitioner,

—against—

THE PEOPLE OF THE STATE OF NEW YORK,

Respondent.

---

**PETITION FOR A WRIT OF CERTIORARI TO THE  
COURT OF APPEALS OF THE STATE OF NEW YORK**

*To the Honorable Chief Justice of the United States and the  
Associate Justices of the Supreme Court of the United  
States:*

Your petitioner Henry Kravitz respectfully prays for a writ of certiorari to the Court of Appeals of the State of New York, to review a judgment of that Court entered on March 5th, 1942, reversing an order of the Appellate Division of the Supreme Court, Second Department, which order had reversed on the law a judgment of the Court of Special Sessions of the City of New York convicting petitioner of the possession of policy slips in violation of New York Penal Law, Sections 974 and 975.

***Statement of Matters Involved.***

An information was filed by the District Attorney of Queens County on October 2nd, 1940, accusing petitioner of violating Sections 974 and 975 in that on September 28th,

1940, he had in his possession a number of policy slips (7-9).

Trial was had in the Court of Special Sessions on January 20th, 1941 (19-20). There was no substantial dispute as to the facts. A police officer testified that petitioner had in his possession a carton containing twelve envelopes, which in turn contained 395 slips (27-30). The officer testified to admissions by the petitioner to the effect that he distributed the slips to various customers for 60¢ each (30). A photograph of one of the slips is reproduced in the record together with a photograph of the envelope containing it (58-63); also one of the instruction sheets (64-69). It is undisputed that no purchaser was permitted to specify the particular number he chose to play but he would be assigned a number which would not be revealed to him until he had completed his purchase. This important circumstance was recognized by all courts below and is the factor on which the case turns.

Petitioner was convicted by the Court of Special Sessions (44), and on January 27th, 1941 (50), fined \$250.00 or sixty days in the city prison (56-57).

He duly appealed to the Appellate Division of the Supreme Court, Second Department, which on June 30th, 1941, unanimously reversed the judgment, dismissed the information and remitted the fine, holding that selection of one's own number or numbers as a winning combination was indispensable to constitute the crime of policy. The opinion of the Appellate Division is reported in 262 App. Div. 911, 28 N. Y. S. 2nd 938.

Thereafter, by permission, the people appealed to the Court of Appeals, which on March 5th, 1942, unanimously reversed the order of the Appellate Division and affirmed the judgment of the Court of Special Sessions, holding that the distinction of method of selection by the player of the number to be played should not be the conclusive factor in determining whether there was possession of policy slips (287 N. Y. 475).

***Question Presented.***

Are Sections 974 and 975 of the Penal Law of the State of New York as construed by the Court of Appeals herein, so vague, indefinite and unintelligible as to be unconstitutional in that they violate due process of law, in contravention of the Constitution of the United States, Amendment XIV, Section 1?

***Reason for Allowance of Writ.***

The construction placed by the Court of Appeals upon Penal Law, Sections 974, 975, is so utterly at variance with the common and accepted definition and understanding of the crime of policy (or possession of policy slips) as to render the statutes vague, ambiguous, indefinite and accordingly repugnant to the due process clause of the Constitution.

WHEREFORE, your petitioner prays that a writ of certiorari issue to the Court of Appeals of the State of New York commanding said Court to certify and send to this Court, on a date to be designated, a full and complete transcript of the record of all proceedings of said Court of Appeals had in this cause, to the end that this cause may be reviewed and determined by this Court; that the judgment of the Court of Appeals of the State of New York be reversed, and that petitioner be granted such other, further and different relief as may seem proper.

Dated, New York, N. Y., June 4th, 1942.

HENRY KRAVITZ,

By Jacob W. Friedman,  
Attorney for Petitioner.